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SENATE

REPORT
101-113

NEVADA WILDERNESS PROTECTION ACT OF 1989

AUGUST 30, 1989.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, January 3), 1989

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 974]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 974) to designate certain lands in the State of Nevada as wilderness, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 2, line 3 strike "entitle" and insert "entitled".
2. On page 2, line 23 strike "East" and insert " "East".
3. On page 3, strike lines 5 and 6 and insert: "hereby incorporated in, and shall be deemed to be a part of, the Jarbidge Wilderness as designated by section 3(a) of the Wilderness Act (16".
4. On page 10, lines 4 and 5, strike "United States".
5. On page 10, strike section 7 in its entirety and renumber accordingly.
6. Beginning on page 11, line 9 through page 12, line 12 strike section 9 and insert:

SEC. 9. WATER ALLOCATION AUTHORITY.

(a) Within the wilderness areas designated by this Act, there is hereby reserved a quantity of water sufficient to fulfill the purposes of the wilderness areas created by this Act.

(b) The priority date of the water rights reserved in paragraph (a) shall be the date of enactment of this Act.

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(c) The Secretary shall file a claim for the quantification of the water rights reserved in paragraph (a) in an appropriate stream adjudication and shall take all steps necessary to protect such rights in such an adjudication.

(d) The Federal water rights reserved by this Act shall be in addition to any water rights which may have been previously reserved or obtained by the United States for other than wilderness purposes.

7. On pages 12 and 13, strike section 11 and insert:

SEC. 10. CLIMATOLOGICAL DATA COLLECTION.

Subject to such reasonable terms and conditions as the Secretary may prescribe, nothing in this Act or the Wilderness Act shall be construed to prevent, where appropriate, the installation and maintenance of hydrologic, meteorologic, or climatological collection devices within the wilderness areas or additions thereto designated by this Act, where such facilities and access thereto are essential to flood warning, flood control and water reservoir operation purposes.

PURPOSE OF THE MEASURE

The purpose of S. 974, as ordered reported, is to designate approximately 733,400 acres of National Forest System lands in the State of Nevada as wilderness and to make approximately 2.5 million acres of national forest lands in that State available for uses other than wilderness.

BACKGROUND AND NEED

S. 974 is a response to the Forest Service's Roadless Area Review and Evaluation (RARE II). This study of roadless National Forest System lands and the Administration's recommendations thereto were forwarded to the Congress in 1979. Since that time, statewide RARE II wilderness bills have been enacted for all but three States. These States are Montana, Idaho, and Nevada. Passage of this legislation will complete the RARE II process for Nevada.

Although over 3 million acres of Nevada's 5.2 million acres of national forest lands are roadless, the State currently contains only one statutorily designated wilderness area, the 64,667-acre Jarbidge Wilderness, which was set aside in 1964 when the Wilderness Act was enacted. Many of these roadless areas have outstanding wilderness characteristics including: deer, elk, and bighorn sheep herds; threatened and endangered species such as the Lahontan cutthroat trout; alpine lakes and meadows; and aspen forests and pristine grasslands. These lands are becoming more and more important as sources for dispersed recreation for Nevadans who live in the State's rapidly expanding urban areas. S. 974 would preserve approximately 14 percent of Nevada's national forest lands as wilderness. This amounts to slightly more than 1 percent of the State which would be included in the National Wilderness Preservation System.

In addition, S. 974 would end the RARE II controversy in Nevada by insuring that lands not designated as wilderness by this Act are made available for uses other than wilderness.

LEGISLATIVE HISTORY

In the 99th Congress, the Committee held 5 days of field hearings on the Nevada wilderness issue. Last Congress, the Committee conducted hearings in Washington on Nevada wilderness legislation but took no further action. The House of Representatives, however, twice passed a Nevada wilderness bill in the 100th Congress.

S. 974 was introduced by Senators Reid and Bryan on May 11, 1989. A hearing was held before the Subcommittee on Public Lands, National Parks and Forests on July 24.

At the business meeting on August 2, 1989, the Senate Committee on Energy and Natural Resources ordered S. 974, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on August 2, 1989, by a majority vote of a quorum present, recommends that the Senate pass S. 974 if amended, as described herein.

The rollcall vote on reporting the measure was 16 yeas, 3 nays, as follows:

YEAS	NAYS
Mr. Johnston	Mr. Wallop
Mr. Bumpers	Mr. Murkowski
Mr. Ford	Mr. Nickles
Mr. Metzenbaum*	
Mr. Bradley	
Mr. Bingaman*	
Mr. Wirth	
Mr. Conrad	
Mr. Heflin	
Mr. Rockefeller	
Mr. McClure	
Mr. Hatfield*	
Mr. Domenici	
Mr. Burns	
Mr. Garn	
Mr. McConnell*	

*Indicates voted by proxy.

COMMITTEE AMENDMENTS

During the consideration of S. 974, the Committee adopted several amendments, many of them technical and clarifying. The amendments and an explanation of each follows.

1. On page 2, line 3, strike "entitle" and insert "entitled".

This amendment corrects a typographical error.

2. On page 2, line 23, strike "East" and insert " "East".

This amendment corrects a typographical error.

3. On page 3, strike lines 5 and 6 in their entirety and insert in lieu thereof the following: "hereby incorporated in, and shall be deemed to be a part of, the Jarbidge Wilderness as designated by section 3(a) of the Wilderness Act (16".

This is a clarifying amendment.

4. On page 10, lines 4 and 5, strike the words "United States".

This is a technical amendment.

5. On page 10, strike Section 7 in its entirety and renumber the subsequent sections accordingly.

This amendment deletes the language in S. 974 as introduced which would have authorized the use of snowmobiles within the proposed Mt. Rose Wilderness. The Committee does not believe that an exception should be made to the provisions of the Wilderness Act prohibiting the use of snowmobiles in wilderness areas.

6. On pages 11 and 12, strike section 9 in its entirety and insert the following new section:

SEC. 9. WATER ALLOCATION AUTHORITY.

(a) Within the wilderness areas designated by this Act, there is hereby reserved a quantity of water sufficient to fulfill the purposes of the wilderness areas created by this Act.

(b) The priority date of the water rights reserved in paragraph (a) shall be the date of enactment of this Act.

(c) The Secretary shall file a claim for the quantification of the water rights reserved in paragraph (a) in an appropriate stream adjudication and shall take all steps necessary to protect such rights in such an adjudication.

(d) The Federal water rights reserved by this Act shall be in addition to any water rights which may have been previously reserved or obtained by the United States for other than wilderness purposes.

This amendment deletes several findings of general applicability dealing with water allocation authority contained in S. 974, as introduced. The amendment retains, with certain conforming changes, the language in the bill concerning Federal reserved water rights specifically for the wilderness areas in Nevada designated by this Act.

7. On pages 12 and 13, strike section 11 in its entirety and insert the following:

SEC. 10. CLIMATOLOGICAL DATA COLLECTION.

Subject to such reasonable terms and conditions as the Secretary may prescribe, nothing in this Act or the Wilderness Act shall be construed to prevent, where appropriate, the installation and maintenance of hydrologic, meteorologic, or climatological collection devices within the wilderness areas or additions thereto designated by this Act, where such facilities and access thereto are essential to flood warning, flood control and water reservior operation purposes.

This amendment clarifies the language in the bill as introduced dealing with installation and maintenance of climatological data collection devices in wilderness areas.

SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title for the legislation—the "Nevada Wilderness Act of 1989."

Section 2 designates 14 areas, totalling approximately 733,400 acres, in the State of Nevada as components of the National Wilderness Preservation System.

The Committee recognizes that four of the wilderness areas proposed in S.974 lie within two potential Military Operations Areas (MOA's) which would be used by the Navy for operations associated with Naval Air Station (NAS) Fallon. These areas are Alta Toquima, Arc Dome, Table Mountain, and Currant Mountain. The Committee notes that these areas are potential MOA's and any formal designation of these areas would likely not be completed until sometime after 1993. The 7 existing MOA's used currently by NAS Fallon are not affected by the wilderness designations in S. 974.

The Committee recognizes the important mission of NAS Fallon in providing air warfare training facilities for the Navy Carrier Airwings prior to deployment. The Committee also is aware that other important military training efforts depend on adequate air space in sparsely populated areas. At the same time, the Committee is aware that controversy exists regarding the issue of military overflights, especially low level flights, over noise sensitive areas such as some national parks and wilderness areas.

The bill as reported from the Committee does not change the existing law, policies, or regulations concerning this issue.

Sections 3 and 4 contain standard language found in most wilderness bills regarding maps, legal descriptions, and administration of the wilderness areas.

Section 5 contains release and sufficiency language.

Section 6 has three subsections. Subsection (a) reaffirms the provisions of the wilderness Act that permit livestock grazing in wilderness areas and incorporates, by reference, language regarding the administration of grazing in wilderness contained in the RARE II wilderness bill for Colorado (Public Law 96–560) and House Report 96–617. Subsection (b) directs the Secretary of Agriculture to review grazing policies, practices, and regulations in national forest wilderness areas in Nevada to insure compliance with the intent of Congress. Subsection (c) requires the preparation and submission of a report to the appropriate Committee of Congress regarding the administration of grazing in wilderness areas in Nevada.

Section 7 provides that no protective perimeters around wilderness areas in Nevada will be established due to the enactment of this Act.

Section 8 contains provisions relating to Federal reserved water rights. There are four subsections. Subsection (a) reserves the quantity of water sufficient to fulfill the purposes of the wilderness areas designated by S. 974. Subsection (b) establishes the priority date of such reservation as the date of enactment of this Act. Subsection (c) directs the Secretary of Agriculture to file a claim for the quantification of the water reserved in (a) in an appropriate stream adjudication and to take the steps necessary to protect such

rights in the adjudication. Subsection (d) makes it clear that the water rights reserved in S. 974 are in addition to any water rights previously reserved or otherwise obtained by the United States for other than wilderness purposes.

Section 9 reaffirms the provisions of the Wilderness Act that pertain to state jurisdiction over fish and wildlife in national forests.

Section 10 permits, where appropriate and under terms and conditions satisfactory to the Secretary, the installation and maintenance of hydrologic, meteorologic, or climatological collection devices in wilderness areas established by this Act. Such facilities, and access thereto, are to be permitted only where essential for flood warning, flood control, or water reservoir purposes.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 24, 1989.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 974, the Nevada Wilderness Protection Act of 1989, as ordered reported by the Senate Committee on Energy and Natural Resources on August 2, 1989. We estimate that enactment of this bill would increase federal expenditures by about $250,000 in 1990.

S. 974 would designate 733,400 acres of land in Nevada as wilderness and would release another 2.4 million acres for other uses. The bill would also: Protect valid existing rights within the wilderness areas; require that, within one year of the bill's enactment, the Department of the Interior review and report on grazing in wilderness areas in Nevada; require the Forest Service to ensure that sufficient water supplies are retained by the federal government to preserve the wilderness characteristics of the designated areas; and permit under certain circumstances, the installation of hydrologic, meteorologic or climatological devices within the designated areas.

Based on information from the Forest Services, CBO estimates that enactment of S. 974 would result in additional costs to the federal government totaling about $250,000 in 1990, assuming appropriation of the necessary funds. These costs would be primarily for the development of boundaries, visitor maps and signs. Subsequent annual operations and maintenance costs are not expected to be significant.

We do not expect enactment of this bill to affect the budget of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

Sincerely,

ROBERT F. HALL
(For Robert D. Reischauer, Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 974. The bill is not a regulatory measure in the sense of imposing Government-established standards of significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 974, as reported.

EXECUTIVE COMMUNICATIONS

On July 11, 1989, the Committee on Energy and Natural Resources requested legislative reports from the Department of Agriculture and the Office of Management and Budget setting forth executive views on S. 974. These reports had not been received at the time the report on S. 974 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the appropriate agency at the Subcommittee hearing follows:

STATEMENT OF GEORGE M. LEONARD, ASSOCIATE CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE: I appreciate the opportunity to testify for the Department of Agriculture regarding S. 974, a bill to designate certain lands in the State of Nevada as wilderness, and for other purposes. Of the 5.7 million acres of National Forest System lands in Nevada, only one area has been designated as wilderness. That is the 65,000-acre Jarbidge Wilderness.

The Forest Plans are the basis for our recommendations regarding this bill. The Department of Agriculture recommends enactment of S. 974, if amended to reflect the 412,400 acres recommended for wilderness in Forest Plans. Our recommendations include ten new wilderness and an addition to the Jarbidge Wilderness.

We support the enactment of S. 974, if amended.

I would like to briefly address areas of particular concern to us.

PROPOSED WILDERNESS AREAS AND BOUNDARIES

Significant differences occur between some of the boundaries proposed in S. 974 and our recommendations in the Forest Plans. With respect to the Jarbidge addition and the nine new wilderness areas we would like the opportunity to work with the subcommittee to consider alternative boundary locations that would improve our ability to manage these areas.

We do not recommend wilderness designation for those areas that are not recommended for wilderness in the Forest Plans; namely, Currant Mountain, Quinn Canyon, Table Mountain, and Santa Rosa. Our specific views on these areas are summarized in the attached supplemental statement that is attached to my testimony. I have also attached an acreage table comparing our wilderness recommendations with those of S. 974.

"RELEASE" AND "SUFFICIENCY" LANGUAGE

We think it is essential that the Congress resolve the uncertainty over future management of roadless areas within the National Forests in Nevada. Thus, we urge the subcommittee to carefully consider the "release" and "sufficiency" language in section 5.

"Release" and "sufficiency" are related, but separate, concepts. Release language provides a legislative declaration that lands not included by Congress in a wilderness, wilderness study area, or special management area shall be managed for multiple-use values in accordance with the Forest plans. Sufficiency language provides a legislative declaration that the Forest Service review of wilderness issues is legally sufficient and not subject to judicial review.

The original "RARE II language"—like that in S. 974—was intended to remove the wilderness question from judicial review and to promote some certainty in resource management. However, since all of the Forest plans in Nevada have been completed, the RARE II language is moot, because the Forest plan recommendations supercede RARE II.

Retaining the RARE II language in National Forest wilderness legislation for Idaho might cause further litigation to determine the relationship of the RARE II language to the Forest plans, thus adding to the uncertainty over management of lands not designated as wilderness or another special category. Updating the RARE II language would help promote more certainty, but would not guarantee it. The updated language would more clearly spell our congressional intent, and thus be helpful in resolving both administrative appeals and litigation that might arise after enactment of S. 974 or similar legislation.

Therefore, Mr. Chairman, we recommend that the release and sufficiency language in this bill be updated to reflect that the Forest Land and Resource Management Plans—rather than the RARE II recommendations—provide the basis for congressional release and the congressional determination of sufficiency. We would like to work with the subcommittee in drafting suitable language to replace that now in section 5.

GRAZING IN WILDERNESS AREAS

Section 6 reiterates certain provisions of the Wilderness Act and the grazing guidelines that were developed during the discussions on Colorado wilderness designations (P.L. 96-560). These guidelines were implemented nationally. Therefore, this reference is not needed.

MT. ROSE SNOWMOBILE CORRIDOR

Section 7 would permit the use of snowmobiles within the proposed Mt. Rose wilderness from January 1 to April 30. We strongly oppose this section, because it is in direct conflict with the Wilderness Act. Allowing the use of mechanized equipment within wilderness for recreational purposes would not be a good precedent to establish.

PROHIBITION OF BUFFER ZONES

We support section 8 that would prohibit "buffer zones" around wilderness areas in the State of Nevada.

WATER ALLOCATION AUTHORITY

The Forest Service is responsible for assuring that the water and other resources on National Forest System lands are managed in accordance with applicable legal authority. This authority is derived from numerous statutes, including but not limited to: the Organic Act of 1897, the Organic Act of 1944, the Multiple-Use Sustained Yield Act of 1960, the Wilderness Act, the Federal Land Policy and Management Act of 1976, and the National Forest Management Act of 1976.

The Forest Service has several management mechanisms in place to protect water resources in accordance with our management responsibilities. These are: administrative control, appropriation of water rights under State water laws, reserved water right claims under Federal law, acquisition of land or water rights, and, finally, as a last resort, condemnation of lands or water rights.

We believe decisions involving Federal water rights in wildernesses should be handled on a case-by-case basis, and each wilderness designation should contain a clear expression of the intent of Congress with regard to the creation of such water rights. As presently drafted, section 9 provides specific direction and authority for the protection of the water resources of the areas to be designated. Because the wilderness areas designated by S. 974 are at the top of the watersheds and encompass the headwaters of the streams within them, we believe that the Federal reserved water rights created by section 9 for the protection of wilderness characteristics will not interfere with water rights and uses downstream from those areas.

STATE FISH AND WILDLIFE AUTHORITY

We have no objection to section 10 that would clarify the jurisdiction of the State of Nevada with respect to the management of fish and wildlife in National Forests in Nevada.

CLIMATOLOGICAL DATA COLLECTION

We do not oppose the gathering of climatological data within wildernesses. However, we recommend that section 11 be amended to ensure that installation and maintenance of data-gathering devices is conducted within existing regulations and in conformance with the overall intent of the Wilderness Act.

SUMMARY

In summary, we would support the enactment of S. 974 if amended to substantially conform to the recommendations in the Forest Plans for the Toiyabe and Humboldt National Forests. Amendments should also reflect our other recommendations in the attached supplemental statement.

I would be pleased to answer questions or provide additional information.

Comparison of National Forest Plans and Wilderness Bills for Nevada, 101st Congress

Area name	Acres—				
	Forest plan recommendation	H.R. 2066 (Vucanovich)	S. 974 (Reid)	H.R. 2320 (Bilbray)	H.R. 2352 (Darden)
Toiyabe National Forest:					
Arc Dome	94,400	0	115,000	115,000	146,000
Alta Toquima	31,000	0	38,000	38,000	45,000
Mt. Charleston	42,400	32,000	43,000	43,000	47,000
Mt. Rose [1]	19,000	[2] 29,000	28,000	28,000	37,000
Table Mountain	0	0	98,000	98,000	125,000
Toyiabe Crest	0	0	0	0	79,000
Excelsior [3]	0	0	0	0	122,000
Total	186,900	61,000	322,000	322,000	601,000
Humboldt National Forest:					
Santa Rosa	0	0	31,000	31,000	80,000
Quinn Canyon	0	0	27,000	27,000	95,000
Mt. Moriah	60,700	71,000	82,000	82,000	98,000
Ruby Mountain	67,900	0	90,000	90,000	143,000
Grant Range	43,100	0	50,000	50,000	60,000
Jarbidge Addition	26,400	20,000	48,500	48,500	54,000
East Humboldts	18,500	0	36,900	36,900	21,000
Currant Mountain	0	0	36,000	36,000	49,000
Elk Mountain	0	0	0	0	12,600
Schell Peaks	0	0	0	0	120,000
S. Snake	0	0	0	0	42,000
Total	216,600	91,000	401,400	401,400	774,600
Inyo National Forest: Boundary Peak	8,900	8,900	10,000	10,000	23,000
Total Nevada	412,400	160,900	733,400	733,400	1,398,600

[1] Includes 3,000 acres more or less in LTBMU.

* NRA.
* Includes lands on Inyo National Forest.

SUPPLEMENTAL STATEMENT ON S. 974, NEVADA WILDERNESS PROTECTION ACT OF 1989

WILDERNESS AREAS RECOMMENDED FOR DELETION

Currant Mountain Wilderness (Section 2(4))

The Currant Mountain area was not recommended for wilderness in the Forest Plan due to the following reasons: much evidence of past activities by people; pine nut gathering activities by Native Americans and other recreation users, high mineral potential, and moderate wilderness qualities.

Quinn Canyon Wilderness (Section 2(8))

Quinn Canyon was not recommended for wilderness because of high mineral potential and an incomplete mineral inventory. There are over 900 mining claims staked in the area indicating a high potential for gold, silver, mercury, fluorspar, and molybdenum. Uranium and lead deposits have also been identified. Mineral potential exists throughout the area.

Table Mountain Wilderness (Section 2(11))

Table Mountain was not recommended for wilderness in the Forest Plan due to the intensity of ongoing and planned management programs which include wildlife habitat improvement projects. In addition to existing structures, there are plans to build more watershed stabilization structures and to use prescribed burning or mechanical methods for vegetation manipulation for wildlife habitat improvement. Examples of structures include: fenced enclosures, check dams, loose rock structures for sediment control, and stream improvements for fish habitat. Rocky Mountain elk were reintroduced into the Table Mountain area. The initial elk transplant consisted of 50 animals. The herd expanded rapidly to 300 animals. Prescribed fire and mechanical manipulation are both useful in managing aspen stands frequented by the elk. These activities are inconsistent with wilderness designation.

Santa Rosa Wilderness (Section 2(14))

The Santa Rosa area is characterized by low wilderness values and wilderness designation would conflict with an ongoing intensive range management program. There are many structural and nonstructural range improvements within the area that require maintenance. Although we do not recommend designation, if Congress decides to designate this area, we recommend that the name be changed to "Santa Rosa Peak Wilderness." This would help avoid confusion with the existing "Santa Rosa Wilderness" on National Forest System lands in California.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 974, as reported.

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